SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 768

THE BOYS MARKETS, INC.,
Petitioner,

vs.

RETAIL CLERK'S UNION, LOCAL 770,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF PEABODY COAL COMPANY, AMICUS CURIAE, IN SUPPORT OF PETITIONER

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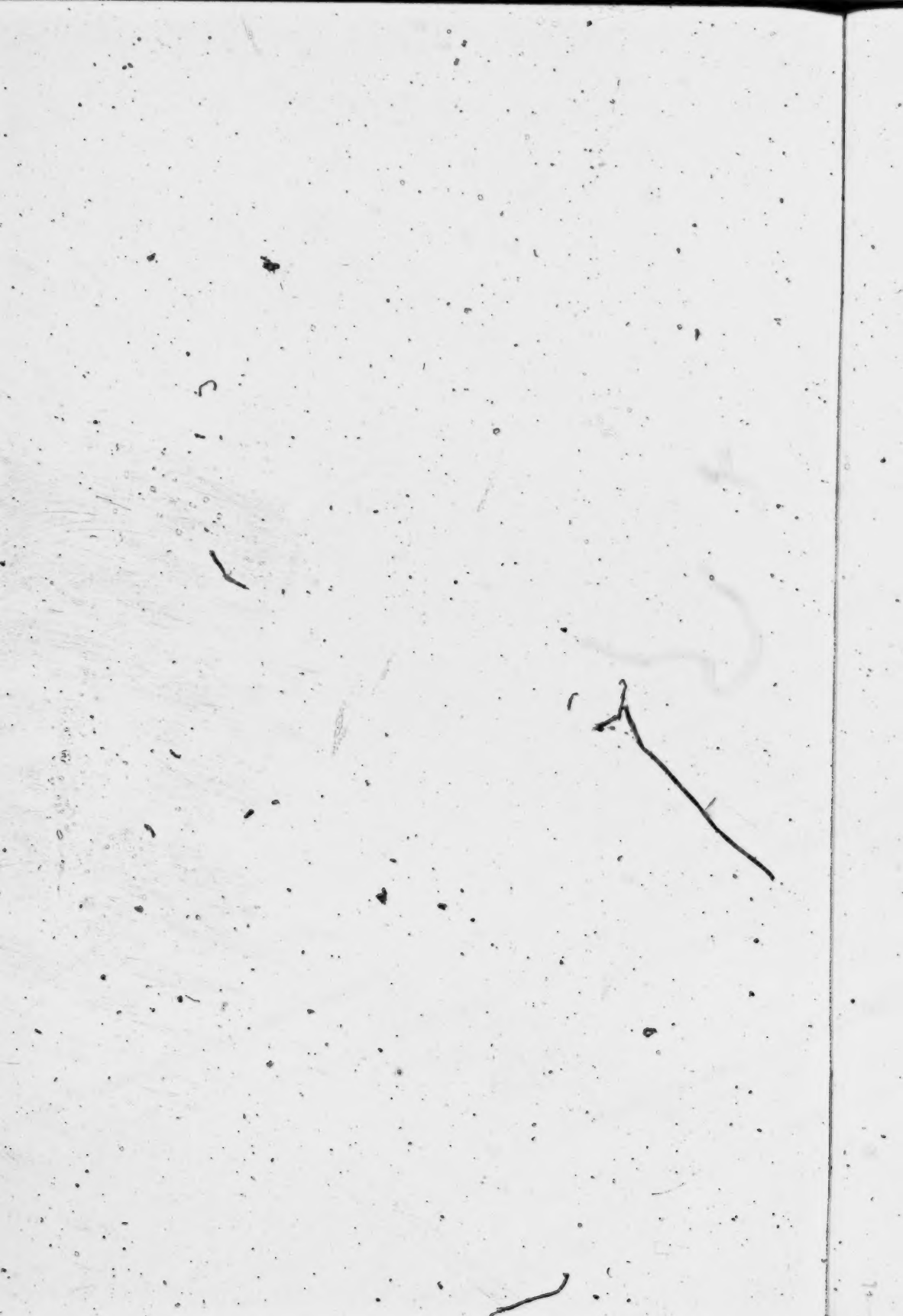

INDEX

	Page
Interest of Amicus Curiae	1
Argument	5
Conclusion	22

Cases Cited

Association of Westinghouse Salaried Employees v. Westinghouse Electric Co., 348 U. S. 437, 75 S. Ct. 489 (1955) 7, 13

Avco Corp. v. Aero Lodge 735, IAM, 390 U. S. 557, 88 S. Ct. 1235 (1968) 3, 22

Brotherhood of Railroad Trainmen v. Chicago River and Indiana Railroad Company, 353 U. S. 30, 77 S. Ct. 63 (1957) 16, 17, 20

Graham v. Brotherhood of Firemen, 338 U. S. 232, 70 S. Ct. 14 (1949) 15

Local 174, Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Lucas Flour Co., 369 U. S. 95, 82 S. Ct. 571 (1962) 3, 6

Sinclair Refining Co. v. Atkinson, 370 U. S. 195, 82 S. Ct. 1328 (1962) 4, 18, 21, 22

Syres v. Oil Workers International Union, 350 U. S. 892, 76 S. Ct. 152 (1955) 15

Textile Workers Union v. Lincoln Mills, 353 U. S. 448, 77 S. Ct. 912 (1957) 4, 13, 14, 15, 16, 20, 21

United States v. Hutchinson, 312 U. S. 219, 61 S. Ct. 463, 85 L. Ed. 788 (1941) 8, 9, 10, 20

United Steelworkers of America v. American Manufacturing Company, 363 U. S. 564, 80 S. Ct. 343 (1960) 18

United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U. S. 593, 80 S. Ct. 1358 (1960) 18
United Steelworkers of America v. Warner and Gulf Navigation Company, 363 U. S. 374, 80 S. Ct. 1347 (1960) 18
Virginia R. Co. v. System Federation, 300 U. S. 515, 57 S. Ct. 592 (1937) 15

Statutes Cited

Labor-Management Relations Act of 1947, as amended, 29 U. S. C., Section 185 .....5, 14, 19, 20, 21
Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C., Section 101 et seq. 4, 5, 7, 11, 12, 22
Taft-Hartley Act, 61 Stat. 136, 29 U. S. C. 185 ..... 12, 13, 14, 19, 20
Wagner Act, 49 Stat. 449, 29 U. S. C., Section 151 et seq. 11, 12

Report Cited

Senate Report No. 105, 80th Cong., 1st Session .. 11, 12, 14

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BRIEF OF PEABODY COAL COMPANY, AMICUS CURIAE, IN SUPPORT OF PETITIONER

I

INTEREST OF AMICUS CURIAE

Peabody Coal Company produces a substantial amount of the coal required to generate electricity in the midwest, southeast, southwest and northwest regions of the United States. It operates approximately fifty mines, including its Bee-Veer Mine in Randolph and Macon Counties in the State of Missouri. The employees at that mine are rep-

resented by the International Union, United Mine Workers of America and its appropriate district and local. On October 14, 1968, Peabody and the Union entered into a contract which provides for settlement of local and district disputes by arbitration, which reads in part as follows:

> "The United Mine Workers of America and the operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Local and District Disputes' section of this agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts."

The agreement provides that seniority is by "mine" and promotion to permanent vacancies and new jobs are to be filled by mine seniority at each mine.

In May of 1969 Peabody opened a new mine in Randolph and Chariton Counties for the production of coal. This mine is called the Prairie Hill Mine, is some twelve miles from the Bee-Veer Mine and does not use any of the facilities and machinery of said Bee-Veer Mine and involves coal lands, machinery, preparation facilities, transportation facilities, offices, supervision and other facilities which are separate and apart from said Bee-Veer Mine.

According to the Union, the Bee-Veer and Prairie Hill Mines are not separate mines; that employees of the Bee-Veer Mine are entitled to exercise their seniority to bid on jobs at the Prairie Hill Mine and that there should be one seniority list for both mines. Peabody asserted that they are separate mines; that there should be separate seniority

lists for each mine and that it was entitled to hire employees of its own choosing without regard to seniority at the Bee-Veer Mine.

Instead of resolving the matter through arbitration, the Union picketed the Prairie Hill Mine and caused a work stoppage. Peabody sued for an injunction in the Circuit Court of Randolph County, Missouri,[1] based on the Union's breach of the implied no-strike clause.[2]

The Circuit Court granted Peabody a temporary injunction. Thereafter, the Union removed the case to the federal court[3] and filed a motion to dissolve the injunction based on **Avco Corporation.**[4] The injunction was dissolved by the District Court and Peabody appealed to the Court of Appeals for the Eighth Circuit.[5]

Immediately after the injunction case was removed to the federal court, Peabody filed suit in that court for specific performance of the Union's obligation to submit the matter to arbitration.[6]

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[1] **Peabody Coal Company v. Barnes, et al.**, No. 21230, Circuit Court, Randolph County, Missouri.

[2] **Local 174, Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Lucas Flour Co.**, 369 U. S. 95, 82 S. Ct. 571 (1962).

[3] **Peabody Coal Company v. Paul Barnes, et al.**, United States District Court, Eastern District of Missouri, Northern Division, No. N-69-C-24.

[4] **Avco Corp. v. Aero Lodge 735, IAM**, 390 U. S. 557, 88 S. Ct. 1235 (1968).

[5] **Peabody Coal Company v. Paul Barnes, et al.**, United States Court of Appeals for the Eighth Circuit, No. 20152. (The Court has granted Peabody 40 days after the decision in this case to file the appendix and brief.)

[6] **Peabody Coal Company v. United Mine Workers of America, Local 7688, et al.**, United States District Court, Eastern District of Missouri, Northern Division, No. N-69-C-25.

Peabody is vitally interested in a resolution of the issues presented to this Court because it becomes involved in cases such as the one outlined above from time to time and the inability to obtain injunctive relief pending resolution of its differences with the Union results in substantial loss of production which cannot be recompensed by a damage award against the Union. If it does not have ability to obtain injunctive relief, it will have to either (a) accede to the Union's demands or (b) remain closed and refuse to process any grievances until the men return to work. Neither of these alternatives appeals to Peabody. It believes that it should get the benefit of its bargain—the right to have employees at work during the entire term of the collective bargaining agreement without recourse to work stoppages. After all, isn't this the reason why an employer signs a collective bargaining agreement?[7] Of this, more will be said later.

We submit that **Sinclair Refining Co. v. Atkinson**, 370 U. S. 195, 82 S. Ct. 1328 (1962), was incorrectly decided and should be overturned. An analysis of American Labor Law and policy is evidenced by Acts of Congress and leading decisions of this Court supports such conclusion. By tracing the development of our labor policy from Norris-LaGuardia, 47 Stat. 70, 29 U. S. C., Section 101 et seq., to **Sinclair**, we shall demonstrate that **Sinclair** is a departure from established labor policy and should and must be overruled.

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[7] **Textile Workers Union v. Lincoln Mills**, 353 U. S. 448, 77 S. Ct. 912 at page 454 (1957) and Senate Report No. 105, 80th Cong., 1st Session, p. 16.

II

ARGUMENT

The question presented to this Court has been concisely set forth in Petitioner's Brief. Our argument shall present this question in two parts. The first shall deal with the right of the United States District Courts to enjoin strikes where the action originates in those Courts and the second shall deal with the issue of whether United States District Courts must after removal of an action from a state court in which an injunction was granted against a labor organization dissolve such injunction.

(a)

The United States District Courts have jurisdiction under Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U. S. C., Section 185, to enjoin strikes and work stoppages by labor organizations in violation of their solemn obligation not to strike contained in their collective bargaining agreements and Section 4 of the Norris-LaGuardia Act, 29 U. S. C., Section 104, does not bar the issuance of such an injunction. Accordingly, the decision of this Court in Sinclair Refining Co. v. Atkinson, *supra*, should and must be overruled.

No-strike clauses may be express or implied. In the instant case, The Boys Markets, Inc. by use of the collective bargaining process obtained an express no-strike clause under the terms of which the Union agreed to resolve matters by use of the "Adjustment and Arbitration" provision set forth in the parties labor agreement (App. 25-29). As part and parcel of this provision, it agreed not to strike over matters subject to adjustment and arbitration. The pertinent clause reads thus:

> "2. **Work Stoppages.** Matters subject to the procedures of this Article shall be settled and resolved in

the manner provided herein. During the term of this Agreement, there shall be no cessation or stoppage of work, lock-out, picketing or boycotts, except that this limitation shall not be binding upon either party hereto if the other party refuses to perform any obligation under this Article or refuses or fails to abide by, accept or perform a decision or award of an arbitrator or board'' (App. 28).

Other employers have obtained implied no-strike clauses by agreeing to provisions for compulsory arbitration through the process of free collective bargaining.[8]

Contracts containing an express or implied no-strike clause give the Union the right to enjoin an employer from locking out his employees in order to resolve a grievance. Unions seek grievance and arbitration provisions in collective bargaining agreements to avoid economic warfare as means of settling disputes. By doing so they recognize that grievance and arbitration provisions have a therapeutic value to them. As a consequence, they accede to employer requests for no-strike clauses or compulsory arbitration.

Breach or violation of the no-strike provision of a labor agreement cannot be tolerated or condoned. Indeed, it is difficult to envision any action or activity more likely to

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[8] **Local 174, Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Lucas Flour Co.**, 369 U. S. 95, 82 S. Ct. 571 (1962). In that case the labor agreement provided for arbitration. The union, instead of following the grievance and arbitration provisions of the collective bargaining agreement, struck the company. Although the agreement did not contain a no-strike clause, the employer sued for damages claiming that the strike was a violation of the collective bargaining agreement and recovered damages in the state court. This Court affirmed and held that the compulsory arbitration provision implied a no-strike clause. It said: "Even more in point, a contrary view would be completely at odds with the basic policy of national labor legislation to promote the arbitral process as a substitute for economic warfare" (369 U. S. at page 105).

reduce a labor agreement to a worthless scrap of paper, to irreparably impair the parties' relationship and more inimical to the economic best interests of company, union and workers alike, than the indulgence in its violation.

This Court has recognized that:

> "It is a matter of industrial history that stoppages of work because of disciplinary penalties against individuals, or because of failure to pay the rates claimed, or because of the promotion or layoff of one employee rather than another, or for similar reasons, have been frequent occurrences."[9]

Instances of the type mentioned above are typical of the items that give rise to work stoppages in violation of express or implied no-strike clauses. They involve interpretation of terms of labor agreements or are factual situations which are best solved by the arbitration process rather than by resorting to economic warfare. Clearly, the Norris-LaGuardia Act was never designed to protect unions or individuals who struck in violation of their solemn contractual obligations.

Norris-LaGuardia[10] was enacted in 1932. At that time individuals had difficulty in engaging in concerted activity and in joining labor unions. The public policy of that law is expressed in the preamble as follows:

> "In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

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[9] **Association of Westinghouse Salaried Employees v. Westinghouse Electric Co.**, 348 U. S. 437, 75 S. Ct. 489 (1955) at page 457.

[10] 47 Stat. 70, 29 U. S. C. 101 et seq.

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted."

An analysis of the foregoing indicates that the Norris-LaGuardia Act was passed to give individuals the right to decline or associate with their fellow workers for the purpose of collective bargaining free from interference, restraint and coercion.

In **United States v. Hutchinson,**[11] defendants, who were officers of the Carpenters Union, were indicted for violation of the Sherman Act because they had engaged in a jurisdictional dispute with the Machinists over the removal of machinery. The Carpenters refused arbitration, struck and circularized letters asking union members and their friends to refrain from buying Anheuser-Busch beer.

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[11] 312 U. S. 219, 61 S. Ct. 463, 85 L. Ed. 788 (1941).

Demurrers to the indictment were sustained and the government appealed.

The court pointed out that the Clayton Act was designed to remove certain trade union activities from the ambit of the Sherman Act; that for twenty years unions had worked for the passage of the Clayton Act; that the courts unduly restricted the Clayton Act by restricting the scope of that Act to trade union activities directed against an employer by his own employees and that this view caused agitation which "again led to legislation and in 1932 Congress wrote the Norris-LaGuardia Act."[12]

This Court pointed out that in determining whether trade union conduct violated the Sherman Act, the Court had to consider both the Clayton and Norris-LaGuardia Acts. It said:

> "The Norris-LaGuardia Act removed the fetters upon trade union activities which according to judicial construction § 20 of the Clayton Act had left untouched, by still narrowing the circumstances under which the federal court could grant injunctions in labor disputes. More especially the Act explicitly formulated the 'public policy of the United States' in regard to the industrial conflict and by its light established that the allowable area of union activity was not to be restricted as it had been in the Duplex case, to the immediate employer-employee relation. Therefore, whether trade union conduct constitutes a violation of the Sherman Law is to be determined only by reading the Sherman Law and § 20 of the Clayton Act and the Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct."[13]

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[12] **United States v. Hutchinson,** 312 U. S. 219, 61 S. Ct. 463, 85 L. Ed. 788 (1941) at page 231.

[13] **United States v. Hutchinson,** supra, page 231.

This Court then said:[14]

> "The relation of the Norris-LaGuardia Act to the Clayton Act is not that of a tightly drawn amendment to a technically phrased tax provision. **The underlying aim of the Norris-LaGuardia Act was to restore the broad purpose which Congress thought it had formulated in the Clayton Act but which was frustrated, so Congress believed, by unduly restrictive judicial construction. This was authoritatively stated by the House Committee on the Judiciary. 'The purpose of the bill is to protect the rights of labor in the same manner the Congress intended when it enacted the Clayton Act, October 15, 1914, 38 Stat. L. 738, which act, by reason of its construction and application by the Federal courts, is ineffectual to accomplish the congressional intent.'** H. Rep. No. 669, 72d Congress, 1st Session, p. 3. The Norris-LaGuardia Act was a disapproval of Duplex Printing Press Co. v. Deering, supra, and Bedford Cut Stone Co. v. Journeyman Stone Cutters' Association, 274 U. S. 37, 47 S. Ct. 522, 71 L. Ed. 916, 54 A. L. R. 791, as the authoritative interpretation of § 20 of the Clayton Act, for Congress now placed its own meaning upon that section. The Norris-LaGuardia Act reasserted the original purpose of the Clayton Act by infusing into it the immunized trade union activities as redefined by the later Act. In this light § 20 removes all such allowable conduct from the taint of being 'violations of any law of the United States', including the Sherman Law." (Emphasis added.)

Norris-LaGuardia was not designed to prevent an employer from requiring a union to live up to its solemn obligations. Its objective was to give individuals an opportunity to organize and engage in collective bargaining.

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[14] **United States v. Hutchinson**, supra, pages 235-236.

To accomplish this it restricted the power of the federal courts to grant injunctions.

Section 4[15] of that Act prohibited injunctions by courts of the United States in labor disputes as defined in the Act. Labor disputes was defined as including any controversy "concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."[16]

Norris-LaGuardia was not concerned with the enforcement of collective bargaining agreements. Rather, it was designed to give individuals an opportunity to engage in activity designed to result in a collective bargaining agreement. It must be considered in the light of the mischief it sought to remedy, later acts of Congress and decisions of this Court.

In 1935, three years after passage of the Norris-LaGuardia Act, Congress passed the Wagner Act.[17] The policy of that Act was to give workers an opportunity to engage in collective bargaining. In the "Findings and Policy" Congress said:

> "* * * It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting

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[15] 47 Stat. 70, 29 U. S. C. 104.

[16] 47 Stat. 73, 29 U. S. C. 113.

[17] 49 Stat. 449, 29 U. S. C. 151 et seq.

> the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."[18]

Under the terms of that Act any employer for the first time was required to engage in collective bargaining with the representatives of his employees.[19]

The Wagner Act defined the term "labor dispute" in language substantially identical to the language of Norris-LaGuardia defining that term.[20]

In 1947 the Taft-Hartley Amendments to the Wagner Act were passed.[21] Section 301 of the Taft-Hartley Act provided for suits against unions. The pertinent parts of that section read as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> "(b) Any labor organization which represents employees in an industry affecting commerce . . . and any employer whose activities affect commerce . . .

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[18] 49 Stat. 449, 29 U. S. C. 151.

[19] 49 Stat. 449, 29 U. S. C. 158(a)(5).

[20] The Wagner Act inserts the word "tenure" after the word "terms" in line two of the definition. Otherwise, the two definitions are identical. 49 Stat. 450, 29 U. S. C. 152(9) and 47 Stat. 73, 29 U. S. C. 113(c).

[21] 61 Stat. 136.

shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."[22]

This Court was first called upon to consider whether the Act was substantive or procedural in **Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.**[23] In that case three members of this Court indicated that § 301 did not create a federal substantive law and that state law was controlling. One member of the Court did not participate, two members concurred with the opinion for other reasons and two members of the Court dissented. As a consequence of that split decision, the issue was presented to the Court two years later in **Textile Workers Union of America v. Lincoln Mills.**[24]

In that case there were several grievances over work loads and work assignments. The collective bargaining agreement of the parties set forth a grievance and arbitration procedure and a no-strike clause. After exhausting the grievance procedure, the union requested arbitration and the employer refused to comply with that request.

Suit was filed to compel specific performance of the employer's obligation to arbitrate. The District Court ordered the employer to arbitrate and by a divided vote

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[22] 61 Stat. 156, 29 U. S. C. 185(a) and (b).

[23] 348 U. S. 437, 75 S. Ct. 489 (1955).

[24] 353 U. S. 448, 77 S. Ct. 912 (1957).

the Court of Appeals reversed. This Court granted certiorari. It concluded that Section 301(a) was substantive and that Section 301(b) was procedural. The Court concluded that federal substantive law should apply and said:

> "* * * We conclude that the substantive law to apply under § 301(a) is federal law which the court must fashion from the policy of our national labor laws."[25]

In reaching the foregoing conclusion, this Court relied on the Senate Report with respect to passage of the Taft-Hartley Act which reads in part thus:

> "Congress was also interested in promoting collective bargaining that ended with agreements not to strike. The Senate Report, *supra*, p. 16, states:
>
> 'If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.
>
> 'Consequently, to encourage the making of agreements and to promote industrial peace through faithful performancy by the parties, collective agreements affecting interstate commerce

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[25] **Textile Workers Union of America v. Lincoln Mills**, 353 U. S. 448, 77 S. Ct. 912 at page 451.

should be enforceable in the Federal courts. Our amendment would provide for suits by unions as legal entities and against unions as legal entities in the Federal courts in disputes affecting commerce.' "[26]

Although specific performance of an agreement to arbitrate is a mandatory injunction compelling an employer to arbitrate, this Court rejected the argument that the Norris-LaGuardia Act prohibited such relief. In doing so it recognized that a literal reading might bring the case within the scope of that Act. It said:

> "Though a literal reading might bring the dispute within the terms of that Act . . . we see no justification in policy for restricting § 301(a) to damage suits leaving specific performance of a contract to arbitrate grievance disputes to the inapposite procedural requirements of that Act."[27]

In **Textile Workers**, this Court recognized that the Norris-LaGuardia Act did not prevent all injunctions. It cited three cases involving racial discrimination. Two of those cases arose under the Railway Labor Act and the third arose under the Labor-Management Relations Act. In each case this Court held that Norris-LaGuardia did not prevent the Court from granting injunctions in cases involving racial discrimination under the Railway Labor Act and the Labor-Management Relations Act.[28]

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[26] **Textile Workers Union of America v. Lincoln Mills**, supra, at page 454.

[27] **Textile Workers Union of America v. Lincoln Mills**, supra, at page 458.

[28] **Virginia R. Co. v. System Federation**, 300 U. S. 515, 57 S. Ct. 592 (1937); **Graham v. Brotherhood of Firemen**, 338 U. S. 232, 70 S. Ct. 14 (1949) and **Syres v. Oil Workers International Union**, 350 U. S. 892, 76 S. Ct. 152 (1955).

During the same term at which this Court decided **Lincoln Mills**, supra, it held that the Norris-LaGuardia Act was not applicable to a minor dispute arising under the Railway Labor Act and that a railroad was entitled to enjoin a strike arising out of that dispute. **Brotherhood of Railroad Trainmen v. Chicago River and Indiana Railroad Company.**[29]

In that case the parties were in disagreement over twenty-one grievances. Nineteen involved claims for additional compensation, one involved a claim for reinstatement to a higher position and one was for reinstatement to the employ of the carrier. When the parties could not agree on disposition of the grievances, the union called a strike. Injunctive relief was then sought by the railroad in the federal court. After granting a preliminary injunction, the District Court vacated its order because it was of the opinion that the Norris-LaGuardia Act deprived it of jurisdiction to grant relief. The Court of Appeals reversed and this Court granted certiorari.

The Railway Labor Act sets forth certain provisions with respect to minor disputes that are typical of the provisions of a collective bargaining agreement providing for compulsory arbitration. This Court held that Norris-LaGuardia did not prevent the railroad from obtaining an injunction in the federal court. It said:

> "We hold that the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes. **There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved.** We think that the purposes of these acts are reconcilable"[30] (Emphasis added).

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[29] 353 U. S. 30, 77 S. Ct. 63 (1957).

[30] 353 U. S. 30 at page 40.

The Court then discussed at length the purposes of each act to demonstrate that they could be reconciled. It said:

> "In adopting the Railway Labor Act, Congress endeavored to bring about stable relationships between labor and management in this most important national industry. * * *
>
> "The Norris-LaGuardia Act, on the other hand, was designed primarily to protect working men in the exercise of organized, economic power, which is vital to collective bargaining. The Act aimed to correct existing abuses of the injunctive remedy in labor disputes. Federal courts had been drawn into the field under the guise either of enforcing federal statutes, principally the Sherman Act, or through diversity of citizenship jurisdiction. In the latter cases, the courts employed principles of federal law frequently at variance with the concepts of labor law in the States where they sat. Congress acted to prevent the injunctions of the federal courts from upsetting the natural interplay of the competing economic forces of labor and capital. Rep. LaGuardia, during the floor debates on the 1932 Act, recognized that the machinery of the Railway Labor Act channeled these economic forces, in matters dealing with railway labor, into special processes intended to compromise them. Such controversies, therefore, are not the same as those in which the injunction strips labor of its primary weapon without substituting any reasonable alternative."[31]

A careful analysis of **Brotherhood of Railroad Trainmen v. Chicago River and Indiana Railroad Company**, supra, indicates it is directly in point in the instant case and as this Court accommodated the Norris-LaGuardia Act to

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[31] 353 U. S. 30 at pages 40 and 41.

the Railway Labor Act, it should accommodate the Norris-LaGuardia Act to the National Labor Relations Act.

By virtue of the provisions of the Railway Labor Act minor disputes are subject to adjustment as provided in the Act and cannot result in a strike. In cases where a labor agreement provides for compulsory arbitration, disputes are settled by virtue of the arbitration procedure and a union should not be entitled to strike in an effort to gain by the use of economic force that which it may or may not have gained by arbitration. In this way Norris-LaGuardia is accommodated to the Labor-Management Relations Act. We believed that this Court would so declare the law when in 1960 it decided the so-called trilogy cases[32] which held that the federal courts in determining whether a dispute is arbitrable are confined to a determination of whether the dispute submitted is on its face subject to arbitration and that it should not determine the merits of the dispute or decide whether it is so frivolous and patently baseless that it is not subject to arbitration.

Accordingly, when **Sinclair Refining Co. v. Atkinson,**[33] was presented to this Court, the labor bar and legal scholars believed that Norris-LaGuardia would be accommodated to the Labor-Management Relations Act and that this Court would uphold an employer's right to injunctive relief when a union struck in violation of its duty to arbitrate and its express or implied no-strike clause.

In **Sinclair,** supra, the complaint for injunction alleged that the collective bargaining agreement of the parties

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[32] **United Steelworkers of America v. American Manufacturing Company,** 363 U. S. 564, 80 S. Ct. 343 (1960); **United Steelworkers of America v. Warner and Gulf Navigation Company,** 363 U. S. 374, 80 S. Ct. 1347 (1960) and **United Steelworkers of America v. Enterprise Wheel and Car Corp.,** 363 U. S. 593, 80 S. Ct. 1358 (1960).

[33] 370 U. S. 195, 82 S. Ct. 1328 (1962).

contained a clause under the terms of which the union could not strike; that over a 19 month period the union had engaged in nine separate work stoppages, all of which grew out of grievances subject to arbitration. The District Court denied injunctive relief. Its decision was affirmed by the Court of Appeals and this Court granted certiorari.

This Court held that the parties were engaged in a labor dispute within the meaning of the Norris-LaGuardia Act and that the Congress by enactment of Section 301 did not repeal the Norris-LaGuardia proscriptions against injunctions in labor disputes. Much of the Court's decision was based on the fact that the legislative history of Section 301 did not indicate a determination to repeal Norris-LaGuardia.

We submit that such determination begs the issue which is whether Norris-LaGuardia should be accommodated to the Labor-Management Relations Act in those cases where the parties labor agreement calls for compulsory arbitration and contains an express or implied no-strike clause.

Norris-LaGuardia remains effective in cases other than the type described above. Congress decided by the passage of Section 301 to permit the courts to fashion a federal substantive law. In fashioning such law the courts are warranted in accommodating Norris-LaGuardia to the Labor-Management Relations Act to establish a uniform body of federal law which gives employers the benefit of their bargain and compels unions to live up to their obligations.

This Court's conclusion that Norris-LaGuardia's anti-injunction provisions remain applicable to Section 301 suits is indefensible on public policy grounds. The absence of an injunctive remedy hampers the general policy of Section 301 that collective bargaining agreements should be enforceable. Because of **Sinclair** employers have

been unable to enforce no-strike clauses in the federal courts. Employers who have bargained for the security of a constant labor force are unable to enjoy the benefits of their bargain. The Court's holding conflicts with the very strong policy favoring arbitration of labor disputes that this Court has read into Section 301. In the absence of an injunctive remedy for breach of an express or implied no-strike clause, effective use of any contractual arbitration procedure is seriously hampered. Arbitration is extremely difficult in the midst of a strike.

This Court has been willing to construe the words of Norris-LaGuardia to require specific performance of agreements to arbitrate grievances. These same policy considerations dictate that a no-strike clause be enforced by injunctive relief. The injunction is incidental to the obligation to arbitrate. It merely retains the status quo until the arbitration is terminated. Once this occurs the union has either won or lost the dispute. If it won, then there is no need to strike. In the event it loses, it should abide by the decision and not strike to reverse it.

United States v. Hutchinson and **Brotherhood of Railroad Trainmen v. Chicago River and Indiana Railroad Company**, supra, have accommodated Norris-LaGuardia to the Clayton and Sherman Acts and to the Railway Labor Act. Such accommodations should be made in the instant case. Further, the strong public policy for arbitration of labor disputes as evidenced by this Court in the cases heretofore mentioned supports our conclusion. In **Textile Workers v. Lincoln Mills**, supra, this Court said:

> "Plainly the agreement to arbitrate grievances is the quid quo pro for an agreement not to strike. Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor

organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf or against labor organizations and that industrial peace can be best obtained only in that way."[34]

We submit that industrial peace can only be obtained by injunctive relief for breach of a no-strike clause; that Congress when it created a Section 301 remedy did not intend to deprive employers of their right to injunctive relief in cases involving breaches of no-strike clauses and that American labor policy is best served by accommodating Norris-LaGuardia to Section 301 of the Labor-Management Relations Act.

(b)

The United States District Courts are not, after removal of an action from a State court in which an injunction was granted against a labor organization for breach of a no-strike clause, obligated to dissolve such injunction because of the Norris-LaGuardia Act.

American labor law should and must be uniform. At the present time a lack of uniformity exists with respect to injunctions in violation of a no-strike clause. This because state courts may grant an injunction and federal courts may not because of this Court's decision in **Sinclair Refining Company v. Atkinson**, supra.

The dissent in **Sinclair** recognized that state courts would become the forum for obtaining injunctions for violation of no-strike clauses.

Ultimately, state court injunctions were removed to the federal courts and the issue then was whether in a removed case the federal courts were required to dissolve such injunctions.

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[34] **Textile Workers v. Lincoln Mills**, 353 U. S. 448, 77 S. Ct. 912 (1957) at page 455.

In **Avco Corp. v. Aero Lodge 735, IAM,**[35] this Court reserved decision on such issue. Three members of this Court in a concurring opinion indicated that at a future date the Court would "have an opportunity to reconsider the scope and continuing validity of **Sinclair.**"

If federal labor law is to be uniform, then the rule with respect to the granting of injunctions in violation of a no-strike clause should be uniform in all classes of cases including those which are not removed from the state to federal courts.

Norris-LaGuardia was never intended as a limitation on the equitable jurisdiction of the state courts. It was designed to extend and only extends to the federal courts. Norris-LaGuardia applies only to "Courts of the United States."[36] Such courts are defined as "any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress."[37] It does not apply to state courts. To make it applicable to state courts, this Court will have to read such a finding into Section 301. This it cannot do.

If American labor law is to be uniform, the rule should be the same in the state and federal courts. This can best be accomplished by overturning **Sinclair.**

III

CONCLUSION

We submit that this Court should overrule **Sinclair Refining Company v. Atkinson,** supra, and hold that injunctions may be obtained in either federal or state courts

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[35] 390 U. S. 557, 88 S. Ct. 1235 (1968).

[36] 47 Stat. 70, 29 U. S. C. 101 et seq.

[37] 47 Stat. 73, 29 U. S. C. 113.

for violation of no-strike clauses of collective bargaining agreements. In so doing this Court will stabilize labor relations, cause arbitration to be a substitute for economic warfare, end wildcat strikes and give the parties to collective bargaining agreements the benefit of their bargain.

Respectfully submitted

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